



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 3, 2019

Marc Zafferano  
City Attorney of San Bruno  
567 El Camino Real  
San Bruno, CA 94066-4299

Re: Your Request for Advice  
**Our File No. A-19-171**

Dear Mr. Zafferano:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

May the Vice Mayor of San Bruno take part in decisions related to a proposed mixed-use development project, given that she owns two parcels of real property located between 500 and 1,000 feet away from the project site?

### CONCLUSION

No, the Vice Mayor may not take part in decisions related to the proposed mixed-use development project, because the project would have a reasonably foreseeable, material financial effect on the Vice Mayor's real property economic interest, specifically given the possible change in market value and income-producing potential of the property, and that effect is distinguishable from the project's effect on the public generally.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

### FACTS AS PRESENTED BY REQUESTER

The City of San Bruno ("City") is currently in the process of a mixed-use development project, the Mills Park Project ("Project"). The Mills Park Project is one of the City's first and, to date, the largest mixed-use development to be proposed pursuant to the City's "Transit Corridors Specific Plan" ("Plan"), which was adopted in 2013 with the goal of revitalizing areas of San Bruno, including the City's downtown core, the new Caltrain station, and along El Camino Real. The Project fronts on El Camino Real, and would replace an existing commercial shopping center consisting of approximately 110,000 square feet of floor area with surface parking. The proposed Project consists of two mixed-use buildings with a total of 425 condominium units (representing 25% of the total number of units allowed in the entire Plan area), a 42,000 square foot grocery store, and 4,000 square feet of commercial space on 5.38 acres. The proposed buildings range in height from one to five stories, with the taller elements sited closer to El Camino Real, and the lower elements sited closer to Linden Avenue, the street directly to the west of the Project consisting of single-family homes.

Vice Mayor Irene O'Connell has two residential real property interests located near the Project site. The first property is the Vice Mayor's primary residence, and is located on Acacia Avenue, approximately 858 feet southwest from the closest portion of the Project. The property is located at an elevation that is approximately 36 feet higher than El Camino Real. The neighborhood is hilly, with single family ranch-style homes between one and two stories, with one- to two-car garages, built in the first half of the twentieth century. The second property is a rental property that Vice Mayor O'Connell has a 50% ownership interest in, and is located on Henley Avenue, approximately 682 feet southeast from the closest portion of the Project. The homes in that multi-family neighborhood can be characterized as both single-family homes and duplexes between one and two stories, on primarily flat, narrow streets, and built in the first half of the twentieth century.

The Initial Study, prepared for the Project, concludes that the Project would have:

- No impact on scenic corridors, vistas, or views;
- Less than significant impact on air quality, either as a result of temporary construction activities, or due to the grocery store, which could mitigate any such impacts to less than significant level;
- No impact in surrounding neighborhoods due to noise resulting from additional traffic;
- Less than significant impact after mitigation due to temporary construction noise that would occur at a 100-foot threshold from the project;
- No significant impact from traffic, which was studied at 19 intersections, including those near both of the Vice Mayor's properties; and
- No significant impact from parking, as the Project met all parking standards as initially proposed, and was then modified to include additional parking substantially in excess of that required.

You also note that the Project would not be visible from either of the Vice Mayor's properties, and neither of the properties are located on streets that would be used to commute to the Project. The Project is designed to direct all traffic on to particular intersections that intersect El

Camino Real and San Bruno Avenue. Those intersections are all more than 500 feet and in some cases more than 1,000 feet from her properties.

Additionally, 25.3% of the residential units in the City are located within a radius of 2,640 feet, or ½ mile of the project.

In your request for advice, you also included a report from economic consulting firm EPS. EPS reviewed academic and professional literature to determine whether there is more than a “hypothetical or theoretical possibility” that the two main project features, a grocery store and up to 425 residential units, could affect the market value or income producing potential of Vice Mayor O’Connell’s properties. After reviewing the information, EPS concluded that “it would be difficult to establish a direct and unambiguous property value impact from the Mills Park Project on a class of properties” and that “in a relatively small city such as San Bruno it is hard to quantify this effect separately from other positive or negative effects on value.” In 2008, EPS began assisting the City to draft and implement the Transit Corridor Specific Plan. In 2019, the City retained the firm to assist with economic analysis associated with negotiating the Development Agreement for the Project.

Your request for advice also included two attached maps, with one map depicting the Plan area, which would include the Project site, and another depicting the Project site and surrounding residential areas.

### ANALYSIS

Section 87100 of the Political Reform Act provides, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on certain enumerated economic interests. (Section 87103.) Those economic interests include “[a]ny business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more,” “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more,” and “[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103.) Here, Vice Mayor O’Connell has two real property interests in her primary residence and rental property. She also has a business entity interest in her rental property as a business and may also have a source of income interest in any tenant(s) of that rental property.

#### Reasonably Foreseeable, Material Financial Effect

With respect to economic interests not explicitly involved in decision, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.” (Regulation 18701(b).)

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's development potential, income producing potential, highest and best use, or market value, or the parcel's character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality. (Regulation 18702.2(a)(8).)

We have previously concluded that projects smaller in scale would impact the market value of homes located within distances of a project similar to the distance here. (See, e.g., *Chopra* Advice Letter, No. A-18-098 [reasonably foreseeable that construction of 118 new residential dwellings on land utilized as a public park located about 930 feet from residence of two City of Mountain View councilmembers would have a material financial effect on the market value of their homes; *Wright* Advice Letter, No. A-17-201 [reasonably foreseeable that mixed-use development that includes 10.45 acres of commercial use, 98 condominiums, 22 single-family detached homes on undeveloped land 700 feet from Mayor's Antioch residence would have a material financial effect on the market value of surrounding properties, even those 700 feet away].)

At 682 feet away and approximately one to two blocks from the Project site, the Vice Mayor's rental property is close to a project that aims to "revitalize" the area, including the city's downtown core, with additional commercial space and 425 new residential units. Given these significant increases in the number of available dwelling units, and the fact that the Project is part of an effort to "revitalize" that part of San Bruno, it is reasonably foreseeable that the Project would have a material financial effect on Vice Mayor O'Connell's rental property interest, specifically with respect to the market value and income-earning potential of the rental property.<sup>2</sup>

### The Public Generally

A reasonably foreseeable, material financial impact on an economic interest constitutes a disqualifying "financial interest" under the Act only when the effect on the public official's economic interest is distinguishable from the decision's effect on the public generally. (Section 87103.) Regulation 18703 provides:

A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment.

(Regulation 18703(a).) Regulation 18703 further specifies that a "significant segment of the public" includes at least 25 percent of all residential real property, commercial real property, or residential real property in the official's jurisdiction. (Regulation 18703(b)(2).) It also specifies that a unique effect on a public official's financial interest includes a disproportionate effect on:

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<sup>2</sup> Given our conclusion regarding the Vice Mayor's interest in the rental property, it is unnecessary to determine whether her personal residence would similarly cause a conflict of interest.

- (1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity;
- (2) An official's business entity or real property resulting from the proximity of a project that is the subject of a decision; and
- (3) An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.

(Regulation 18703(c)(1)-(3).)

Based upon the facts presented, it is unclear whether the decision will affect the prerequisite significant segment, which would include residential real property up to 2,640 feet from the project, considering the magnitude of the project and the relative size of the jurisdiction. However, as noted above, a "unique effect" on an official's economic interests may include effects based on proximity to the project at issue in a decision and effects on income producing potential. The Project at issue here is not of such magnitude that it can be said the properties located 2,640 feet from the Project site would be affected in the same way as Vice Mayor O'Connell's rental property located 682 feet away. While the Project may have *some* effect on properties located 2,640 feet away, it has not been established that the effect on the Vice Mayor's rental property is not unique. Given the close proximity of the rental property to the Project site, the market value and income producing potential may be uniquely affected by the Project.

Accordingly, we conclude that, under the Act, Vice Mayor O'Connell is generally prohibited from taking part in decisions pertaining to the Project.<sup>3</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel



By: Kevin Cornwall  
Counsel, Legal Division

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<sup>3</sup> Given our conclusion, it is unnecessary to further analyze the potential materiality of any foreseeable financial effect on Vice Mayor O'Connell's interests in her rental business and her potential sources of income.